



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

March 31, 1971

Honorable W. O. Williams
County Auditor
Grayson County Courthouse
Sherman, Texas

Opinion No. M-823

Re: Authority of Commissioners'
Court to employ and pay an
attorney for a grand jury
to make investigation.

Dear Mr. Williams:

Your recent request for an opinion asks the following question:

"Can the Grayson County Commissioners' Court legally employ and pay an attorney for a grand jury, which lawyer's duties will be to make an investigation of the offices of the County, particularly the offices of County Attorney and Judge of the County Court at Law, to ascertain why more criminal cases are not being prosecuted in Grayson County?"

It was stated in Stovall v. Shivers, 103 S.W.2d 363 (Tex Comm.App. 1937), that "the duty of the Commissioners' Court is to transact the business, protect the interests, and promote the welfare of the county as a whole".

These are broad and sweeping responsibilities and commensurate powers to carry out such responsibilities must be implied from the statutes.

The Commissioners' Court may employ an attorney to assist in the prosecution of claims and suits and may pay for these services out of county funds. 15 Tex.Jur.2d 386, Counties Sec. 169; Galveston Co. v. Gresham, 220 S.W. 560 (Tex.Civ.App. 1920, error ref.); Terrell v. Greene, 88 Tex. 539, 31 S.W. 631 (1895); Attorney General's Opinions Nos. V-232 (1947); V-416 (1947); V-995 (1950); C-256 (1964).

In City National Bank of Austin v. Presidio County, 26 S.W.

2d 775 (Tex.Civ.App. 1894) the Court held that county commissioners had not exceeded their powers in the employment of outside attorneys, and that they also had power to defray the reasonable expense thereof out of county funds. The Court said,

" . . . The powers of the county commissioners are defined by law, and it is an elementary principle that they have implied authority to do what may be necessary in the exercise of the duties or powers conferred on them. . . ." (at p. 776)

It should be understood that in order for the commissioners' court to so employ an attorney, the matters involved must be those which the grand jury is lawfully authorized to investigate and in which the county has a lawful interest.

This office cannot determine fact questions and we must assume, for the purposes of this opinion, that the Commissioners' Court of Grayson County has a legitimate purpose for the employment of the attorney mentioned and that the grand jury is investigating possible violations of the laws of this state.

A grand jury in Texas, under Article 20.09, Texas Code of Criminal Procedure (Vernon 1965), is empowered as follows:

"The grand jury shall inquire into all offenses liable to indictment of which any member may have knowledge, or of which they shall be informed by the attorney representing the State, or any other credible person."

It has been held that a grand jury is only empowered to inquire into violations of criminal laws. Alt v. State, 83 Tex.Crim. 337, 203 S.W. 53 (1918).

From the nature of the duties of the grand jury, such as summoning witnesses to testify and issuing attachments for witnesses, it seems clear that said grand jury has the implied power to utilize the services of an attorney. Such an attorney as is contemplated by your request would certainly be a "credible person" to give the grand jury information as stated in Article 20.09, Code of Criminal Procedure. Under Article 20.03 of this

Code the presence of this person before the grand jury is prohibited

" . . .when they are discussing the propriety of finding an indictment or voting upon the same."


In answer to your question, the Grayson County Commissioners' Court may legally employ an attorney for a grand jury and pay him from county funds, under the foregoing conditions.

S U M M A R Y

The Commissioners' Court of Grayson County may legally employ an attorney for a grand jury and pay him from county funds so long as the matters involved are such as the grand jury is authorized to investigate and in which the county has a lawful interest.

Very truly yours,

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